



Montana Legislative Services Division  
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July 3, 2008

Representative Ron Stoker  
P.O. Box 1059  
Darby, MT 59829

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Ravalli County Commissioners

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Dear Representative Stoker:

I write in response to the request you made to Greg Petesch on or about June 27 (and developed further in our phone conversation of June 30) for an analysis of the impact of 52 MT A.G.Op. 6 (2008) regarding a possible citizen initiative to repeal the Ravalli County growth policy as well as some related questions you had.

In that recently released opinion, the Montana Attorney General held that the qualified voters for county-wide zoning regulation initiatives are all those county residents who are otherwise eligible to vote. This includes those voters who live in incorporated areas. The net effect of this opinion is to expand--beyond your local county attorney's opinion-- the pool of potential voters for interim zoning regulation initiatives effecting unincorporated areas of a county to include all county residents, not just those living in the unincorporated areas. However, as the Attorney General's opinion pointed out, an initiative or referendum vote, pursuant to Section 76-1-604, MCA, adopting, revising or repealing a county growth policy, is limited only to those "qualified electors of the area covered by the growth policy." See Section 76-1-604(4), MCA. Therefore, in the latter case, (that being the one you inquired about) the legislature has made a conscious decision to limit the pool of qualified electors.


Please bear in mind that Montana code provides that "if an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion is controlling unless overruled by a state district court or the supreme court." Thus the Attorney General's interpretation has the force of law.

You had also asked what the effect would be of an initiative vote, pursuant to Section 76-1-604, MCA, repealing a county growth policy. The issues subsumed within a growth policy are potentially voluminous. See, for example, Section 76-1-601, MCA, for a listing which spans more than two pages and includes such bedrock matters as community goals and objectives, land uses, local services and natural resources. In its plainest terms, the results of such a vote would mean a return to the *status quo* existing before the county commissioners adopted the resolution of intention to adopt the proposed growth policy. Zoning regulations must be made in line with the growth policy. (Section 76-2-203, MCA.) Absent a growth policy and lacking the jurisdictional areas that are created following the adoption of the growth policy, the county could then only zone on a temporary, interim emergency basis as provided for by Section 76-2-206, MCA.

Finally, you inquired as to the definition of the term "zoning district" under Title 76, chapter 2, MCA. A zoning district can be created in one of two ways: under either Section 76-2-101, and following (also known as Part 1 Zoning) where 60% of the affected freeholders petition, or under Section 76-2-201, and following (also known as Part 2 Zoning) where a board of county commissioners which has adopted a growth policy can then adopt zoning regulations for all or part of its area. For purposes of Part 1 Zoning only, the word "district" means any area in excess of 40 acres. For purposes of Part 2 Zoning, the board of county commissioners is mandated to demand of the county planning board and/or the city-county planning board that they make an advisory recommendation as to the boundaries and regulations of the various zoning districts. (See Section 76-2-204, MCA). Those recommendations however, are not binding upon the commissioners. (See Section 76-2-205, MCA).

I trust I have addressed your questions. If you require additional information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeremy Gersovitz', with a long, sweeping horizontal line extending to the right.

Jeremy Gersovitz  
Staff Attorney

Montana Legislative Services